

REMARKS

In response to the Office Action mailed March 16, 2010 (hereinafter, "the Office Action"), Applicants respectfully request reconsideration and reexamination of this application, removal of the rejections outlined below, and the timely allowance of the pending claims.

Status of Claims

Claims 1-30 remain pending for examination.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-7 and 12-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/019367 A1 to Ciurczak et al. ("Ciurczak") in view of U.S. Patent No. 6,306,104 to Cunningham et al. ("Cunningham"). Office Action at p. 3. Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ciurczak in view of Official Notice. *Id.* at p. 10. Claims 26 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2005/0002483 A1 to Wilcox ("Wilcox") in view of Official Notice. *Id.* at p. 12. Claims 8-11 and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ciurczak in view of Wilcox. *Id.* at p. 13. Claims 25, 27, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilcox in view of Cunningham. *Id.* at p. 18. Applicants traverse these section 103(a) rejections and respectfully request withdrawal of the rejections for at least the following reasons.

Ciurczak and Cunningham

Claims 1-7 and 12-19 are not obvious over Ciurczak in view of Cunningham and claims 20 and 21 are not obvious over Ciurczak in view of any prior art properly established by Official Notice. Claim 1 recites the following:

1. A method of using a medical diagnostic testing device,
said method comprising:
 - obtaining a test result using said medical diagnostic testing device;
 - storing said test result in said medical diagnostic testing device; and
 - recording a voice message, associated with said test result, in said medical diagnostic test device.

Neither Ciurczak nor Cunningham disclose, teach, or suggest all of the limitations recited in claim 1 for at least the following reasons.

First, neither Ciurczak nor Cunningham teach “storing [a] test result in [a] medical diagnostic testing device[,]” as recited in claim 1. The Examiner contends Ciurczak discloses this limitation. Office Action at p. 3. Ciurczak is directed to a system for generating and utilizing individualized modeling equations for predicting a patient’s blood glucose values using a central computer. See Ciurczak at Abstract. In the Ciurczak system, “a noninvasive spectral scan [is] obtained from a remote spectral device... and sent to a central computer.” *Id.* at ¶ [0030] (emphasis added). “[The] central computer stores the generated spectral scan... [and a] resultant blood glucose level is calculated[.]” *Id.* (emphasis added). Thus, Ciurczak discloses obtaining a test result using a remote testing device and then storing the result in a central computer, not in the testing device. Nowhere does Ciurczak disclose storing a test result in a

medical diagnostic testing device. Therefore, it is respectfully submitted that claim 1 is not obvious over Ciurczak in view of Cunningham, because neither discloses, teaches, or suggests obtaining a test result using a medical diagnostic testing device and storing the test result in the device.

Second, claim 1 further recites “recording a voice message, associated with said test result, in said medical diagnostic test device[,]” but neither Ciurczak nor Cunningham disclose, teach, or suggest recording a voice message in a medical diagnostic test device. The Examiner contends that this limitation is taught by Ciurczak at paragraph [0101]. Office Action at p. 3. However, paragraph [0101] of Ciurczak merely suggests a voice recognition program as a “suitable transmission mechanism.” In particular, Ciurczak describes using a voice recognition program like a keyboard for inputting and transmitting data to a doctor’s central computer. The Examiner has provided no tenable explanation as to how using voice recognition as a “transmission mechanism” is equivalent to recording a voice message. Moreover, even if the use of voice recognition as disclosed in Ciurczak did involve recording, nowhere does Ciurczak disclose, teach, or suggest that such recording would be in a medical diagnostic test device, as opposed to, for example, the doctor’s central computer of Ciurczak. Furthermore, like Ciurczak, Cunningham is devoid of any teaching of recording a voice message. Accordingly, it is respectfully submitted that claim 1 cannot be obvious over Ciurczak in view of Cunningham, because they fail to disclose, teach, or suggest “recording a voice message... in [a] medical diagnostic test device.”

Claim 12 of the present application recites, “A medical diagnostic testing device, comprising: a testing system for obtaining a test result; a memory for storing said test

result; and an audio system for recording a voice message associated with said test result.” Neither Ciurczak nor Cunningham disclose, teach, or suggest a medical diagnostic testing device that has “an audio system for recording a voice message[.]” As discussed above, nowhere does Ciurczak teach an audio system for recording a voice message, let alone an audio system for recording a voice message incorporated in a medical diagnostic testing device. Likewise, Cunningham does not teach a recording device. Consequently, it is respectfully submitted that claim 12 cannot be obvious over Ciurczak in view of Cunningham, since they fail to disclose, teach, or suggest “an audio system for recording a voice message[.]”

As claims 6-7 ultimately depend from claim 1 and claims 13-21 ultimately depend from claim 12, they are not obvious over Ciurczak in view of Cunningham for at least the reasons discussed above.

Maus

The Office Action rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Ciurczak in view of Cunningham, but as discussed above, claim 1 is not obvious over Ciurczak in view of Cunningham at least because neither reference teaches “recording a voice message, associated with said test result, in said medical diagnostic test device.” Applicants note that the Office Action, in discussing the elements of claim 1, refers to “Maus” several times. Office Action at p. 3. Although the Office Action does not clearly identify a Maus reference, it appears the Examiner may be referring to U.S. Patent No. 6,602,469 to Maus et al., which is one of several references included in the Notice of References Cited that was attached to the Office

Action. Thus, even though the Office Action does not reject any claims over U.S. Patent No. 6,602,469 to Maus et al. ("Maus"), in the interest of expediting prosecution, Applicants provide the following remarks regarding why the pending claims are patentable over Maus.

Nowhere does Maus teach "recording a voice message, associated with [a] test result, in [a] medical diagnostic test device[.]" as recited in claim 1, or an "audio system" for doing so, as recited in claims 12 and 25. The only audio component included in the diagnostic device of Maus is speaker 35. See Maus at col. 12, ll. 14-26. In particular, Maus explains that a "visual display works in concert with a speaker 35 that beeps to convey audible messages." *Id.* Maus additionally notes that "[t]he speaker may also produce other types of audible messages, such as tones, recorded messages, a simulated human voice, and the like." *Id.* (emphasis added). Thus, Maus only teaches an audio element for producing audible messages. While Maus mentions "recorded messages," this is only as an example of a type of audio the device may be preconfigured to produce during operation. A speaker configured to play recorded messages is not the same as "an audio system for recording a voice message associated with [a] test result." Thus, Applicants respectfully submit that claims 1, 12, and 25 would not have been obvious over Maus for at least these reasons.

Wilcox

Claims 25, 27, 29, and 30 are not obvious over Wilcox in view of Cunningham and claims 26 and 28 are not obvious over Wilcox in view of Official Notice at least because the references, both alone and in combination, fail to disclose, teach, or

suggest all of the claimed elements/limitations of claims 25. Claim 25 recites, “In a medical diagnostic testing device that obtains and stores test results, the improvement comprising: an audio system for recording a voice message associated with a test result.” Applicants respectfully submit that claim 25 cannot be obvious over Wilcox in view of Cunningham because they do not disclose, teach, or suggest a medical diagnostic testing device having “an audio system for recording a voice message[.]”

Wilcox merely teaches the use of standard voice recognition software on a computer as a means for a medical professional to input information into a computer. Wilcox is generally directed to methods and apparatuses for outsourcing professional radiology interpretation to ensure high quality service, particularly after normal business hours at the site where the radiology study is obtained. See Wilcox ¶ [0001]. Nowhere does Wilcox specifically disclose an audio system for recording a voice message, let alone such a system incorporated in a medical diagnostic testing device. Wilcox does discuss using voice recognition, but only in disclosing that “[a]fter the interpretation of [a particular radiology] study is completed a formal report is created using industry standard computer based voice recognition software.” Wilcox at ¶ [0009] (emphasis added). Disclosure of using industry standard voice recognition software on a computer is different, on its face, from a medical diagnostic testing device having an audio system for recording a voice message, and the Examiner has provided no tenable argument to the contrary. Thus, Wilcox fails to disclose, teach, or suggest a medical diagnostic testing device that has “an audio system for recording a voice message[.]” as claimed.

The Examiner alleges that “Cunningham discloses... an audio system for recording a voice message associated with a test result (see at least Fig. 1A, column

12, lines 14-26).” Office Action at p. 18. However, as noted above with respect to claim 12, Cunningham is devoid of any teaching of an audio system for recording a voice message. It appears the Examiner may have been pointing to “Fig. 1A, column 12, lines 14-26” of Maus, as was referenced elsewhere in the Office Action, but nowhere does the Office Action state that claim 25 is rejected as being obvious over Wilcox in view of Maus. Notwithstanding this and in the interest of expediting prosecution, Applicants respectfully submit that claim 25 is not obvious over Wilcox in view of Maus at least because Maus, like Wilcox, fails to disclose, teach, or suggest a medical diagnostic testing device having “an audio system for recording a voice message[,]” as discussed above. Thus, since claim 25 is neither obvious over Wilcox in view of Cunningham, nor obvious over Wilcox in view of Maus, the section 103(a) rejection of claim 25 should be withdrawn.

Because claims 26-30 depend from claim 25, it is respectfully submitted that claims 26- 30 are allowable for at least the same reasons as claim 25, and that the section 103(a) rejection of these claims should also be withdrawn.

Claims 8-11 and 22-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ciurczak in view of Wilcox. *Id.* at p. 13. As discussed above, neither Ciurczak nor Wilcox disclose, teach, or suggest “recording a voice message, associated with said test result, in said medical diagnostic test device[,]” as recited in claim 1, or a medical diagnostic testing device that has “an audio system for recording a voice message[,]” as recited in claim 12. Thus, since claims 8-11 ultimately depend from claim 1 and claims 22-24 ultimately depend from claim 12, claims 8-11 and 22-24 are

allowable for at least the same reasons as claims 1 and 12, respectively. Therefore, the section 103(a) rejections of claims 8-11 and 22-24 should also be withdrawn.

Conclusion

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the claims in this Response, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification, abstract, or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

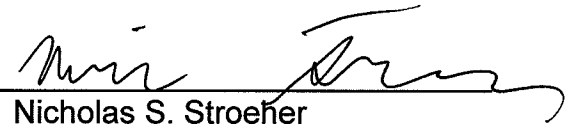
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: June 15, 2010

By: _____


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